

**ARTICLE VI. AIR POLLUTION****DIVISION 1. GENERALLY****Sec. 21-146. Air pollution abatement program.**

The health officer shall conduct an effective program for the abatement of air pollution within the city. Such program shall include, but not be limited to, the performance of the following duties:

- (1) Conducting air quality monitoring and evaluation and maintaining records thereof;
  - (2) Investigating complaints of violations of the Texas Clean Air Act (Article 4477-5 of the Revised Civil Statutes of Texas) and other applicable state and federal air pollution laws and rules, regulations and standards promulgated thereunder, by making investigations, inspections and observations of sources and ambient air conditions and maintaining records of such complaints, investigations, inspections and observations;
  - (3) Cooperating with the city attorney and with county, state and federal officers, offices, departments and agencies in the filing and prosecution of legal actions for civil and criminal enforcement of air pollution and air quality standards laws, rules and regulations;
  - (4) Cooperating with city, county, state and federal officers, offices, departments and other agencies in planning activities for the development of beneficial air resource planning strategies for the city and other matters relating to air quality management;
  - (5) Encouraging voluntary cooperation by persons and by affected groups in the preservation and regulation of purity of the outdoor atmosphere;
  - (6) Collecting and disseminating information to the general public on air pollution.
- (Code 1968, § 21-115; Ord. No. 71-1049, § 1, 6-9-71)

**Secs. 21-147–21-160. Reserved.**

**DIVISION 2. SOURCE REGISTRATION\*****Sec. 21-161. Definitions.**

As used in this division, the following words and terms shall have the meanings ascribed in this section unless the context of their usage clearly indicates another meaning:

*Automotive body repair shop* means any premises that engages in, conducts, or carries on automobile, truck or trailer body repairing or painting, or both.

*Dry cleaning plant* means any premises where fabrics or textiles are cleaned by use of perchloroethylene or petroleum solvents unless the devices used for the cleaning are coin-operated.

*Exempt* means a facility to the extent that it meets one (1) or more of the following conditions:

- (1) A current inspection fee has been paid for the facility pursuant to 31 Texas Administrative Code, Section 101.24.
- (2) A current emissions fee has been paid for the facility pursuant to 31 Texas Administrative Code, Section 101.27.
- (3) The facility operates pursuant to a permit issued under subchapter C of chapter 382 of the Health and Safety Code.
- (4) The facility is owned and operated by the State of Texas or the United States of America.

**\*Editor's note**—Section 2 of Ord. No. 92-180, adopted Feb. 19, 1992, amended div. 2 of Art. VI to read as herein set out. Formerly, div. 2 consisted of §§ 21-161 and 21-163–21-167, which pertained to incinerators and derived from §§ 21-122–21-125 and 21-127 of the 1968 Code; § 1 of Ord. No. 71-2359, adopted Dec. 15, 1971; § 1 of Ord. No. 72-1915, adopted Oct. 24, 1972; § 13 of Ord. No. 82-1109, adopted July 13, 1982; § 1 of Ord. No. 85-1532, adopted Sep. 4, 1985; and § 2 of Ord. No. 85-1721, adopted Oct. 1, 1985.

Section 3 of Ord. No. 92-180 provided further as follows:  
**Section 3.** Any valid permit heretofore issued under Division 2 of Article VI of Chapter 21 of the Code of Ordinances, Houston, Texas, shall be regarded as a valid registration issued under Division 2 of Article VI of Chapter 21 of the Code of Ordinances, Houston, Texas, as amended in Section 2 of this Ordinance for the remainder of the term of the permit.

*Facility* means an automotive body repair shop, dry cleaning plant, gasoline dispensing site, sewage treatment plant, used vehicle sales lot or any premises operating under any standard exemption as more particularly described on the Standard Exemption List that discharges one ton per year or more of airborne contaminants per year.

<i>Standard Exemption List Number</i>	<i>Brief Description</i>
2	Dual chambered incinerator
11	Rubber/plastic curing presses
13	Printing presses
36	Certain metal working equipment
39	Certain brazing, soldering, welding equipment
48	Roll mill or calendar
51	Certain liquid handling—limited to industrial inorganic chemicals
53	Certain liquid handling—limited to adhesives and sealants and industrial organic chemicals
57	Heat treating of metal and metal working
58	Metal furnaces
66	Oil and gas facility
67	Oil and gas facility—temporary
71	Permanent or temporary concrete plant
73	Portable rock crusher
74	Grain facility
75	Surface coating facility
80	Smokeless gas flare
82	Bulk fuel storage
86	Storage tank
87	Heat cleaning device
88	Direct flame incinerator
90	Pathological waste incinerator
91	Bulk mineral product handling facility
92	Oil well servicing bulk sand handling facility
93	Temporary concrete facility
94	Soil stabilization facility
96	Aluminum or copper furnace
97	Trench burner
99	Asphalt concrete facility
102	Abrasive cleaning operation
112	Certain railcar/truck unloading operations
113	Polyester styrene facility
115	Semiconductor manufacturing operation
122	Asphalt silo

*Gasoline dispensing site* means any premises where gasoline is dispensed from a fixed storage tank into vehicles.

*Registration* means a current and valid inspection registration issued under this division.

*Sewage treatment plant* means a premises operated for the purpose of treating waste flowing into a publicly owned sanitary sewage system.

*Standard Exemption List* means the Texas Air Control Board's Standard Exemption List dated August 11, 1989, a true copy of which is incorporated into this article by reference and has been placed on file in the office of the city secretary in connection with adoption of this article. (The subject list has been adopted herein for illustrative purposes to describe the types of facilities subject to regulation under this article, and the August 11, 1989, list shall continue to be referred to for that purpose even if amended or superseded by the state.)

*Used vehicle* means an automobile, truck or trailer of any type that is used or intended for use on the streets and that has previously been registered in Texas or elsewhere.

*Used vehicle sales lot* means any premises utilized by a person required to be licensed as a dealer in motor vehicles under chapter 8 of this Code for the display of used motor vehicles for sale or trade.

(Ord. No. 92-180, § 2, 2-19-92; Ord. No. 93-460, § 1, 4-21-93)

## **Sec. 21-162. Registration required; penalty.**

(a) It shall be unlawful for any person to operate or cause to be operated any facility unless there is an inspection registration for the facility.

(b) It is a defense to prosecution under this section that the facility is exempt.

(c) It is an affirmative defense to prosecution under this section with respect to gasoline dispensing sites that the premises has dispensed less than 10,000 gallons per month in each calendar month beginning with January 1, 1991. Any site that exceeded 10,000 gallons in January of 1991 or that has exceeded 10,000 gallons in any ensuing month is not subject to this affirmative defense.

(d) Violation of this section shall be punishable upon first conviction by a fine of not less than \$250.00 nor more than \$1,000.00. If the actor has been previously convicted under this section, a violation of this section shall be punishable by a fine of not less than \$1,000.00 nor more than \$2,000.00.

(e) Each day that any violation under this section continues shall constitute a separate offense.

(Ord. No. 92-180, § 2, 2-19-92; Ord. No. 93-460, § 2, 4-21-93)

#### Sec. 21-163. Issuance; expiration.

Registrations shall be issued by the health officer. The director shall promulgate application forms on which applications shall be made. Upon the submission of a properly completed application form and the tender of the applicable fee, the health officer shall issue the registration. A separate application shall be required for each facility. A registration shall be valid for one year commencing on the date of its issuance and shall only apply to the facility identified on the registration. A registration is personal and may not be assigned, conveyed or transferred in any manner. (Ord. No. 92-180, § 2, 2-19-92)

#### Sec. 21-164. Compliance.

The director shall ensure that the health officers carry out a regulatory compliance program to determine whether registered facilities are in compliance with all applicable state and federal air pollution control laws and regulations. The regulatory compliance program shall include, but need not be limited to, on site inspections, complaint investigations and reviews of applicable compliance documentation. Civil, administrative and criminal sanctions imposed by law shall be pursued where violations are determined to exist. (Ord. No. 92-180, § 2, 2-19-92)

#### Sec. 21-165. Cumulative.

The purpose of this division is to provide a viable means of locating and monitoring by routine compliance inspections those potential sources of air contamination that are not paying the state for routine inspection through inspection or emis-

sions fees. A registration under this division shall neither excuse the securing of any license, permit, registration or other compliance document required under state or federal pollution laws or regulations, nor excuse full compliance with any applicable state or federal law or regulation. This division is cumulative of all other applicable laws and regulations.

(Ord. No. 92-180, § 2, 2-19-92)

#### Sec. 21-166. Registration fees.

(a) There are hereby assessed the following fees for the issuance of registrations:

(1) Automotive body repair shop \$400.00

(2) Gasoline dispensing site:  
1—6 gasoline pump nozzles,  
per nozzle ..... \$200.00  
7 or more gasoline pump nozzles,  
per nozzle ..... 400.00

Where pumps are so configured that two or more nozzles dispensing different types or grades of fuel are attached to one meter, then the nozzles attached to each such meter shall be regarded as one nozzle for purposes of the above calculation.

(3) Dry cleaning plant (based upon the normal number of employees):  
Fewer than 6 employees.... \$75.00  
6 to 10 employees..... 150.00  
11 or more employees ..... 200.00

(4) Used vehicle sales lot (based on the number of vehicles normally offered for sale):  
1—5 vehicles ..... No charge  
6—100 vehicles ..... 200.00  
101 or more vehicles ..... 300.00

(5) Facilities operating pursuant to exemptions as listed on the Standard Exemption List (except dual chambered and pathological waste incin-

erators), based upon annual airborne contaminant emissions:

1 ton or more but less than 7 tons .....	\$500.00
7 tons or more but less than 12 tons.....	1,000.00
12 tons or more.....	2,000.00

The director shall promulgate procedures for the computation of contaminant discharges and fees under this category. In any instance in which a facility is unable to produce the records needed to establish its emissions with a reasonable degree of certainty, then the health officer shall estimate the amount on the basis of the best available information.

(6) Dual chambered incinerators.....	\$300.00
Pathological waste incinerators.....	600.00
(7) Sewage treatment plant, based upon design capacity in gallons per day:	
Less than 500,000 .....	\$400.00
500,001 to 9,999,999 .....	1,000.00
10,000,000 to 39,999,999 ...	1,500.00
40,000,000 or more .....	2,000.00

(b) Should more than one facility exist on any premises, then the total of all applicable fees shall be payable. Should both exempt and nonexempt facilities exist on any premises, then applicable fees shall be paid for each non-exempt facility.

(c) The foregoing fees shall apply to all privately and publicly owned facilities including those owned and operated by the city. Facilities owned and operated by a county, and city facilities that are operated with general fund revenues, shall be exempt from payment of the fees but shall be required to be registered.

(Ord. No. 92-180, § 2, 2-19-92; Ord. No. 93-460, §§ 3—5, 4-21-93; Ord. No. 02-528, § 13d., 6-19-02)

**Secs. 21-167—21-180. Reserved.**

## ARTICLE VII. TIRE STORAGE AND TIRE CARRIERS\*

### DIVISION 1. GENERALLY

#### Sec. 21-181. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (1) *Driver* means a person designated to act as a driver of a permittee's trucks pursuant to the permit.
- (2) *Elements of nature* means rainfall, snow, sleet, hail or other natural precipitation.
- (3) *Permit* means a valid tire transporters permit issued by the city pursuant to division 2 of this article.
- (4) *Permittee* means a person who holds a valid tire transporters permit issued by the city pursuant to division 2 of this article.
- (5) *Public highway* means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.
- (6) *Tire* means any tire, whether new or used, whether serviceable or unserviceable, made wholly or partially of rubber which was manufactured for use on any vehicle propelled by a motor (including vehicles pushed or pulled by a vehicle propelled by a motor), regardless of whether such vehicle is intended for use on a public highway, provided that such tire is not mounted upon a wheel or rim and in service upon or carried as a component spare part of a vehicle.
- (7) *Tire disposer* means any person who, in compliance with all applicable state, federal and local laws, rules and regulations,

\*Cross references—Junk dealers, scrap metal processors and secondhand dealers § 7-51 et seq.; auto wreckers and storage yards, § 8-101 et seq.; auto wrecking or salvage yards, § 8-29 et seq.

disposes of or converts tires to another purpose including, without limitation, persons who:

- a. landfill, incinerate or otherwise dispose of tires as waste or as fuel; or
- b. by shredding, grinding, chemical treatment or other means reduce tires into basic components for oil, steel, carbon black, rubber, road paving or other marketable salvage materials; or
- c. convert tires into other useful items such as doormats and sandal soles.

(8) *Tire reprocessor* means any person who regrooves, recaps, retreads or otherwise remanufactures unserviceable tires into serviceable tires.

(9) *Truck* means a vehicle designated to be operated by a permittee's drivers for the transport of unserviceable tires pursuant to the permit.

(10) *Unserviceable tire* means any tire, which is worn, defective or damaged so that it is not fit for use upon a vehicle, regardless of whether such tire is in such condition that it can be remanufactured by a tire reprocessor or not. Any tire manufactured for use upon a public highway which is worn, defective or damaged so that it fails to meet any one or more of the standards adopted by the department of public safety for inspection of tires in conjunction with the state's inspection of vehicles program conducted pursuant to Article 6701d of the Revised Civil Statutes of Texas shall constitute an unserviceable tire. In the application of such standards, it shall be presumed that a tire was manufactured for use upon a public highway unless it is marked "not for highway use," "farm use only," "for racing purposes only" or with other use restrictions that would indicate the tire is not meant for highway use. The term "unserviceable tire" shall not include any tire which has been shredded, ground or cut up into pieces one quarter or less the size of the whole tire from which they were derived.

(11) *Unserviceable tire generator* means any person (including, but not limited to, a person engaged in the sale and mounting of new, used or remanufactured automobile, truck and equipment tires who receives unserviceable tires in the exchange process associated therewith and a person who owns or operates fleets of trucks, taxicabs, buses, implements or other vehicles and services all or a portion of their own tire needs) who in the course of his normal business activities generates 100 or more unserviceable tires per calendar year.

(Code 1968, § 21-150; Ord. No. 81-1013, § 1, 5-20-81)

**Sec. 21-182. Open storage of tires declared a nuisance.**

The storage of any tire upon any premises within the city in such a manner that the tire is exposed to the elements of nature is hereby declared to be a nuisance which is subject to abatement at the expense of the owner of such premises as provided by law, including, but not limited to, article IV of this chapter.

(Code 1968, § 21-151; Ord. No. 81-1013, § 1, 5-20-81)

**Sec. 21-183. Open storage of tires prohibited.**

It shall be unlawful for any person to store or to suffer or permit the storage of any tire or tires upon any premises within the city in such a

manner that the tire or tires are exposed to the elements of nature.

(Code 1968, § 21-152; Ord. No. 81-1013, § 1, 5-20-81)

#### **Sec. 21-184. Theft precautions and reports.**

(a) It shall be the duty of each person having any tires within his possession to cause such tires to be kept under lock and key at all times that such person, his agents or employees are not in physical occupancy of the premises where such tires are stored. In the event that such tire or tires are not stored within a building or enclosed container which is capable of being locked and secured for purposes of compliance with this section, then the tires themselves must be locked or secured by passing a heavy bar or chain made of steel not less than three-eighths of one inch in thickness through the center of the tire or tires and locking such bar or chain to a fixture which is not easily removable from the premises; provided, the health officer shall upon written request therefor grant written permission to any person for the employment of tire storage security means other than those set forth above, if such person demonstrates that the storage will comply with all applicable state and municipal laws and ordinances and will provide security from theft which is at least equivalent to the means set forth above. Such written permission, if granted, shall apply only to the persons designated therein and may be revoked by the health officer upon finding that the means to be employed have not been effective or have not been complied with.

(b) Each theft of any tires shall be reported to the health officer in writing within five (5) days after the occurrence. The report shall include the number of tires stolen and a description thereof. The report shall be made regardless of whether such theft is also reported to the police department.

(Code 1968, § 21-153; Ord. No. 81-1013, § 1, 5-20-81)

#### **Sec. 21-185. Penalty for article violations.**

A violation of any of the provisions of this article constitutes a misdemeanor that shall be punishable, upon conviction, by a fine of not less than

two hundred fifty dollars (\$250.00) nor more than two thousand dollars (\$2,000.00), and each day that any violation continues shall constitute a separate offense; provided, however, that an offense provided in this article which also constitutes an offense under state law shall be punishable as provided in the applicable state law.

(Code 1968, § 21-154; Ord. No. 81-1013, § 1, 5-20-81; Ord. No. 85-1762, § 2, 10-8-85; Ord. No. 92-1449, § 37, 11-4-92)

**Charter reference**—Penalty for ordinance violation, Art. II, § 12.

**Cross references**—Assessment of fines against corporations, § 16-76; payment of fines, § 16-78; credit against fines for incarceration, § 35-6 et seq.

#### **Secs. 21-186—21-193. Reserved.**

### **DIVISION 2. PERMITS AND RECORDS**

#### **Sec. 21-194. Permit required.**

It shall be unlawful for any person to transport unserviceable tires upon any public highway within the city unless such person is acting pursuant to a permit. It is an affirmative defense to prosecution under this section that the cargo transported by such person:

- (1) Contains five (5) or less unserviceable tires; or
- (2) Contains five (5) percent or less unserviceable tires by volume and is part of a general cargo of "municipal solid waste" as that term is defined by Article 4477-7 of the Revised Civil Statutes of Texas; or
- (3) Originated outside of the city and is destined for transport outside of the city, provided that no unserviceable tires are loaded or unloaded within the city.

(Code 1968, § 21-160; Ord. No. 81-1013, § 1, 5-20-81)

#### **Sec. 21-195. Unserviceable tire generators disposal and records.**

It shall be unlawful for any unserviceable tire generator to cause or permit any unserviceable

tire to be transported upon any public highway other than by a permittee. Each unserviceable tire generator shall maintain daily records of the numbers of unserviceable tires generated at each premises under his control and his disposition thereof. A receipt showing the number of tires, the names of the unserviceable tire generator and permittee and the permit number of the permittee shall be obtained for each consignment of unserviceable tires to a permittee. Each such receipt shall be issued in duplicate and signed by both parties with one copy thereof to be retained by the unserviceable tire generator and one copy to be retained by the permittee. Unserviceable tire generators who are also permittees shall maintain internal trip tickets in lieu of the hereinabove mentioned receipts for unserviceable tires which they transport.

(Code 1968, § 21-161; Ord. No. 81-1013, § 1, 5-20-81)

#### **Sec. 21-196. Permittee disposal and records.**

It shall be unlawful for any permittee to dispose of any unserviceable tires transported by such permittee other than by the delivery of such tires to a tire disposer or tire reprocessor. Each permittee shall maintain daily records of the number of tires received and delivered. Each permittee shall obtain a receipt showing the number of tires, the names of the permittee and tire disposer or tire reprocessor and the permit number of the permittee for all tires delivered. Each such receipt shall be issued in duplicate and signed by both parties with one copy to be retained by the tire disposer or tire reprocessor and one copy to be retained by the permittee. Tire disposers and tire reprocessors who are also permittees shall maintain internal trip tickets in lieu of the hereinabove mentioned receipts for unserviceable tires which they transport.

(Code 1968, § 21-162; Ord. No. 81-1013, § 1, 5-20-81)

#### **Sec. 21-197. Inspection of records.**

(a) The records required to be made pursuant to sections 21-195 and 21-196 of this Code are within the protection of Chapter 37 of the Texas Penal Code. Such records shall be retained for three (3) years from their creation. Permittees shall maintain the records at the address designated in their application for permit. All such

records shall be made available during the regular business hours of the persons required to keep the same to the police department and the health officer upon request for inspection, audit or copying thereof.

(b) The records required to be made pursuant to sections 21-195 and 21-196 of this Code may be inspected, audited, or copied by the police department and the health officer as often as may be necessary to insure compliance with this article, provided that the health officer shall insure that a comprehensive audit of each permittee's records is performed not less than one time during each permit year.

(Code 1968, § 21-163; Ord. No. 81-1013, § 1, 5-20-81)

#### **Sec. 21-198. Application for permit; oath; fees.**

(a) Each person desiring a tire transporters permit shall make application to the health officer setting forth:

- (1) The name of such person;
- (2) The business address of such person;
- (3) The address within the county at which the records required in this division will be maintained;
- (4) The principal business or occupation of such person;
- (5) A description of each truck which will be used by such applicant for the transport of unserviceable tires including the manufacturer, gross weight, license number, color, vehicle identification number, year of manufacture and registered owner thereof;
- (6) The name and residence address of each driver (inclusive of the applicant if he intends to act as a driver under the permit) who will be authorized to drive the applicant's trucks and their respective driver's license numbers;
- (7) That neither the applicant nor any proposed driver has had a permit which has been revoked under this article within the immediately preceding period of three (3) years.

(b) Such application shall be sworn to be true and correct by the applicant and each driver set

forth therein before an officer authorized to administer oaths.

(c) There is hereby levied and the permit applicant shall submit a nonrefundable fee in the amount of one hundred dollars (\$100.00) plus thirty dollars (\$30.00) for each truck and ten dollars (\$10.00) for each driver to be covered by such permit. (Code 1968, § 21-164; Ord. No. 81-1013, § 1, 5-20-81; Ord. No. 82-1109, § 15, 7-13-82)

**Sec. 21-199. Issuance, duration and amendment; additional fee.**

(a) The health officer shall issue a permit to the applicant designating the trucks and drivers authorized pursuant thereto unless he finds that:

- (1) Any statement on the application was incomplete or false;
- (2) The applicant or any driver listed on the application has committed any offense involving the unlawful disposal or storage or theft of tires within the immediately preceding period of three (3) years; or
- (3) The applicant or any driver listed on the application has had a permit under this article which has been revoked within the immediately preceding period of three (3) years.

(b) In addition to the permit itself, the health officer shall issue to the permittee one identification card for each driver covered thereby and one or more identification plates, stickers or decals to be attached by the permittee in such places and manner as the health officer may administratively direct to each truck covered thereby.

(c) Permits issued under this section shall be valid for one year from the date of issuance unless prior revoked.

(d) Permits issued under this section may be amended as to the trucks or drivers authorized thereunder upon application to the health officer in the same manner as an original application. A fee of thirty dollars (\$30.00) shall be tendered for each truck added. A fee of ten dollars (\$10.00) shall be tendered for each driver added. Such fees shall not be prorated, and no credit shall be allowed for any truck or driver which is deleted. (Code 1968, § 21-165; Ord. No. 81-1013, § 1, 5-20-81; Ord. No. 82-1109, § 16, 7-13-82)

**Sec. 21-200. Permit transfer; reporting of changes, return of identification cards, etc.**

(a) Permits, driver identification cards, and truck identification plates, stickers and decals issued under this article are personal to the permittee and may not be transferred, sublet, leased, assigned, given away or sold in any manner or under any circumstances.

(b) It shall be the duty of each permittee to advise the health officer in writing within five (5) days of any change regarding the permittee's operations as reflected in the application and permit including but not limited to, the discontinuance of a truck or driver or the change of address of the permittee or any driver. Identification cards, plates, stickers and decals for drivers and trucks which have been discontinued shall be returned therewith.

(Code 1968, § 21-166; Ord. No. 81-1013, § 1, 5-20-81)

**Sec. 21-201. Authorized drivers and trucks.**

(a) It shall be unlawful for a permittee to allow any truck to be used for the transport of unserviceable tires except those trucks designated in his permit. The permittee shall insure that each such truck bears the plates, stickers or decals issued therefor at all times.

(b) It shall be unlawful for any permittee to allow any truck while used for the transport of unserviceable tires to be operated except by the drivers designated in his permit.

(c) It shall be unlawful for any person to act as a driver of any permittee's truck while used for the transport of unserviceable tires unless the person is in possession of the driver identification card issued in such person's name to the permittee by the health officer.

(Code 1968, § 21-167; Ord. No. 81-1013, § 1, 5-20-81)

**Sec. 21-202. Grounds for permit revocation.**

Any permit issued under this article may be revoked in accordance with the procedures herein prescribed if it is found that:

- (1) The permittee or any driver designated in the permit has been involved in any violation of the provisions of this article;



- (2) The permittee or any driver designated in the permit violates any state or municipal law or ordinance involving the unlawful disposal or storage or theft of tires or violates any provision of Chapter 37 of the Texas Penal Code relating to the records required to be kept under this article;
  - (3) Any truck designated in the permit is used for the commission of any violation of any state or municipal law or ordinance involving the unlawful disposal or storage or theft of tires; or
  - (4) Any statement made in the application for the permit or any amendment thereto was known to be false or should have been known to be false by any person required to swear to the application.
- (Code 1968, § 21-168; Ord. No. 81-1013, § 1, 5-20-81)

**Sec. 21-203. Investigation of facts prior to revocation; notice to permittee of possible revocation.**

Whenever the health officer receives reliable information that grounds for revocation of a permit exists, he shall investigate the facts. If the health officer finds that there are grounds for revocation of a permit, he shall give written notice to the permittee by personal service or by certified mail, return receipt requested, addressed to the address set forth in the application or the last address furnished pursuant to subsection (b) of section 21-200. Such notice shall set forth:

- (1) The specific grounds upon which the permit in question may be revoked;
  - (2) That there will be a hearing before the health officer in which the city will seek the revocation of the permit;
  - (3) The date, time and place of such hearing; and
  - (4) That the permittee may appear in person and/or be represented by an attorney.
- (Code 1968, § 21-169; Ord. No. 81-1013, § 1, 5-20-81)

**Sec. 21-204. Hearing on permit revocation.**

(a) All hearings shall be held by the director or his designated representative. Such officer shall be referred to as the "hearing officer." However, Supp. No. 1

the director shall not designate any person to perform the duties of hearing officer under this section who has participated in the investigation or has prior knowledge of the allegations or circumstances discovered in the course of said investigation except as may be set forth in the notice given pursuant to section 21-203.

(b) All hearings shall be conducted under rules consistent with the nature of the proceedings; provided, however, that the following rules shall apply to such hearings:

- (1) All parties shall have the right to representation by a licensed attorney, though an attorney is not required.
  - (2) Each party may present witnesses in his own behalf.
  - (3) Each party has the right to cross-examine all witnesses.
  - (4) Only evidence presented before the hearing officer at such hearing may be considered in rendering the final order.
- (Code 1968, § 21-170; Ord. No. 81-1013, § 1, 5-20-81)

**Sec. 21-205. Failure of permittee to appear at revocation hearing.**

If the permittee fails to appear at the hearing at the date and time specified, the city shall introduce evidence to establish a prima facie case showing that grounds exist for revocation of the permit.

(Code 1968, § 21-171; Ord. No. 81-1013, § 1, 5-20-81)

**Sec. 21-206. Findings of hearing officer after permit revocation hearing.**

After completion of the presentation of evidence by all parties appearing, the hearing officer shall make his written findings and render a written order as to whether or not there are grounds for revocation of the permit. If there are such grounds he shall also make written findings which specify the grounds and facts upon which they are based, and he shall revoke the permit; provided, the hearing officer may in the ends of justice take such other lesser actions than revoking the permit including, but not limited to, the temporary suspension of the permit or the revision of the permit by removal of one or more drivers designations

from the permit if he finds that the grounds resulted through no fault of the permittee and he further finds that the grounds resulted through the unauthorized and uncondoned actions of one or more of the drivers designated in the permit or the unauthorized and uncondoned use of one or more of the trucks designated in the permit. A true and accurate copy of the hearing officer's order shall be personally delivered or mailed by certified mail, return receipt requested, to the permittee.

(Code 1968, § 21-172; Ord. No. 81-1013, § 1, 5-20-81)

**Sec. 21-207. No refund of permit fee after permit revocation.**

In the event any permit is revoked, suspended or revised by the hearing officer, the city shall not be liable to any person for any refund of any part of the permit fee.

(Code 1968, § 21-173; Ord. No. 81-1013, § 1, 5-20-81)

**Sec. 21-208. Surrender of permit, plates, decals, etc., upon permit revocation.**

It shall be the duty of each person whose permit has been revoked or suspended to forthwith return to the health officer his permit and any plates, stickers, decals and identification cards issued therewith.

(Code 1968, § 21-174; Ord. No. 81-1013, § 1, 5-20-81)

**Sec. 21-209. Appeals.**

The denial of a permit or the revocation, suspension or revision of a permit may be appealed de novo to the city council upon the filing of a written application therefor with the city secretary within ten (10) days after the hearing officer's written order is rendered. Such an appeal of a revocation, suspension or revision of a permit shall not operate to suspend the hearing officer's order thereupon.

(Code 1968, § 21-175; Ord. No. 81-1013, § 1, 5-20-81)

**Secs. 21-210—21-220. Reserved.**

**ARTICLE VIII. VITAL STATISTICS**

**Sec. 21-221. Officer of registrar created; appointment of registrar.**

The office of the registrar of births and deaths and stillbirths is hereby created. Such registrar shall be appointed by the mayor on the recommendation of the director.

(Code 1968, § 48-1)

**Sec. 21-222. General duties of registrar.**

(a) The registrar of births and deaths and stillbirths shall complete, correct and arrange in chronological order and index the birth and death and stillbirth records of the city and shall forward, prior to the tenth of the following month, to the state bureau of vital statistics, all original certificates of births and deaths and stillbirths filed during the previous month, and shall keep a copy of such records in his office.

(b) The registrar of births and deaths and stillbirths shall tabulate the data shown on the birth and death and stillbirth certificates and shall make such monthly report to the city council as may be required by that body.

(Code 1968, § 48-2)

**Sec. 21-223. Adoption of state law, rules and regulations.**

All of the laws of the state with reference to vital statistics and particularly the Texas Vital Statistic Law [Vernon's Ann. Civ. St. Art. 4477, rules 34a through 55a] and all rules and regulations promulgated by the Texas Department of Health pursuant to such laws be and the same are hereby adopted by reference and made a part of this Code.

(Code 1968, § 48-3)

**Sec. 21-224. Registration of births, deaths, etc., required.**

Every birth and every death and every stillbirth occurring within the city shall be registered, and the registration must be in duplicate, and the

necessary permits issued as provided for under the law adopted by section 21-223 of this Code. (Code 1968, § 48-4)

**Sec. 21-225. Certified copies of records, searches, amendments.**

(a) Upon receipt of a completed application form and the applicable fee prescribed by law, the registrar of births, deaths and stillbirths shall provide certified copies of birth certificates (conventional or wallet size), death certificates and fetal death certificates. The fee for the foregoing certificates shall be an amount equal to that imposed by the Texas Department of Health for the provision of the same certificate or the amount authorized by subsection (g) of section 191.0045 of the Texas Health and Safety Code, whichever is greater.

The certificates requested pursuant to this subsection shall be processed and issued in order of the receipt of completed applications in the office of the registrar unless the applicant requests expedited processing and pays an additional fee of \$15.00 to defray the added costs associated with the special handling of the application. The aforesaid expedited processing fee shall be payable for each separate request for document copies submitted on an expedited basis, regardless of the number of different documents or the number of copies specified in the request.

(b) Any qualified person who desires to receive a copy of a birth or death certificate and who is unable to furnish a complete application form containing all information requested by the registrar of births, deaths and stillbirths may request a search of the files. Such searches shall be conducted on a first-come-first-served basis to the extent that staff resources are available, and the issuance of records under subsection (a) above shall take precedence over searches under this subsection. Additionally, searches under this subsection that are requested for purposes other than genealogical research shall take precedence over those requested for genealogical research purposes. Prior to commencing any such search of the files, the registrar of births, deaths and stillbirths shall collect a fee from the applicant in an amount equal to the search fee imposed by the Texas

Department of Health. If the record is found, the fee shall be credited to the copy charge. If the record is not found, the fee shall be retained as a search fee and shall not be refunded.

(c) Upon receipt of a completed application form the registrar of births, deaths and stillbirths shall provide certificates of birth facts relating to persons born in Texas to the extent that data relating to the birth is available upon the state's data base as provided to the city. The fee for each birth facts certificate issued shall be equal to that imposed by the Texas Department of Health for the issuance of a birth certificate. Certificates of birth facts may be obtained on an expedited basis, subject to payment of the same additional fee established in subsection (a), above.

(d) Upon receipt of a completed application form, the registrar of births, deaths and stillbirths shall provide any information contained on the death certificate as to the exact place of burial of an individual as recorded under applicable state laws and regulations. The charge for such a search of the files will be equal to that imposed by the Texas Department of Health for the same service.

(e) The duties of the registrar under this section shall be performed as authorized and required by applicable state laws and regulations.

(f) The state work and family policies fund fee levied under subsection (e) of section 191.0045 of the Texas Health & Safety Code shall be collected whenever applicable to documents and services provided under this section. Except as provided by subsection (g) below and by subsection (f) of section 191.022 of the Texas Health and Safety Code, all fees collected under this section shall be deposited in the city treasury to the credit of the general fund of the city.

(g) As authorized by subsection (h) of Section 191.0045 of the Texas Health and Safety Code, there is hereby assessed a one dollar fee for the preservation of vital statistics records. This fee shall be in addition to all other fees authorized by state law or city ordinance and shall be applied and payable on the issuance of each vital statistics record. The fee assessed under this subsection shall be deposited into a fund within the city

treasury to be known as the "preservation of vital statistics records fund," which is hereby created. That fund shall be expended for purposes of the preservation of vital statistics records maintained by the registrar as authorized by section 191.0045(h).

(Code 1968, § 48-5; Ord. No. 78-133, § 1, 1-3-78; Ord. No. 81-2575, § 1, 12-29-81; Ord. No. 86-405, § 1, 3-25-86; Ord. No. 87-1682, § 1, 9-20-87; Ord. No. 89-919, § 1, 6-21-89; Ord. No. 90-802, § 1, 6-27-90; Ord. No. 95-1199, § 1, 11-15-95; Ord. No. 03-1276, § 1, 12-17-03)

**Secs. 21-226—21-235. Reserved.**

## ARTICLE IX. SMOKING\*

### Sec. 21-236. Definitions.

As used in this article, the following words and terms shall have the meanings ascribed to them in this section, unless the context of their usage clearly indicates another meaning:

*Bar.* A lounge bar or restaurant bar.

*Concourse.* A concourse is a public passageway, other than a lobby, which is adjacent to seating areas in theaters, arenas, stadia and concert halls.

*Educational facility.* Any day care center, nursery school, elementary school, middle school, junior high school, senior high school, vocational school, special education center, college or university.

*Employee.* Any person other than a domestic household servant who is employed in consideration of direct or indirect monetary wages, commissions or profits and any contract employee.

*Employer.* Any person who employs the services of one or more employees.

**\*Editor's note**—Ord. No. 2002-800, § 1, adopted August 28, 2002, amended Article IX, §§ 21-236—21-246 in their entirety. Formerly, said article pertained to smoking in public places and derived from Ord. No. 86-1311, § 2, adopted July 30, 1986.

**Cross references**—Air pollution, § 21-146 et seq.; no smoking signs at oil and gas wells, § 31-66; smoking by suburban bus drivers, § 46-147.

*Enclosed areas.* All space between a floor and ceiling that is enclosed on all sides by smoke-impermeable walls or windows (exclusive of door ways) that extend from that floor to the ceiling. An enclosed area may be a portion of a larger enclosed area.

*Exception area.* An area in which smoking is permitted pursuant to section 21-237.

*Large multi-tenant building.* A multi-tenant building with 20,000 square feet or more of useable floor space that has a common heating, ventilating, and air conditioning system in which 50 percent or more of the gross useable floor space is devoted to other than residential, restaurant, hotel/motel, and retail establishment uses. The exterior area within 25 feet of any entrance or exit door or wheelchair ramp serving the door, if any, shall also be included, to the extent it is within the building owner's control and is not being used as a restaurant outdoor seating area.

*Lounge bar.* All areas of any establishment having 50 or more percent of its gross sales from sale of alcoholic beverages for on-premises consumption.

*Multi-tenant.* Any building that has two or more separate occupancies, such as a building owner and one or more tenant occupancies, or if the building owner has no occupancy in the building, then two or more tenant occupancies. For this purpose, an occupancy shall not include a transient occupancy of ten days or less.

*Private function.* Any function for which all of the following conditions are met:

- (1) The function is a specific event for which an entire room or hall has been reserved.
- (2) The function is limited in attendance to people who have been specifically designated and their guests.
- (3) Seating arrangements for the function, if any, are under the control of the sponsor of the function and not of the person otherwise responsible for the public place.

*Public ground transportation facility.* Any facility used in connection with public ground transportation into which the public is provided access.

*Public place.* An enclosed area or any portion thereof to which at any time the public is admitted by general invitation or is otherwise given generally unrestricted access, including but not limited to an enclosed area, which, at any time is being utilized in whole or in part for any of the following purposes:

- (1) Commercial establishments, including but not limited to retail establishments and restaurants;
- (2) A vehicle of public ground transportation, other than limousines for hire, including but not limited to trains, buses, taxicabs and ferries;
- (3) Covered or enclosed public ground transportation facilities;
- (4) Elevators;
- (5) Libraries, educational facilities, museums, auditoriums, art galleries and meeting rooms;
- (6) Hotels and motels;
- (7) Health care facilities, including but not limited to laboratories associated with the rendition of health-care treatment, hospitals, nursing homes, and doctors' and dentists' offices;
- (8) Places of entertainment, including but not limited to gymnasiums, theaters, concert halls, and arenas;
- (9) Restrooms;
- (10) Airports;
- (11) Convention centers;
- (12) Governmental facilities; and
- (13) Retail establishment malls.

The imposition of an entry fee, use charge, membership requirement or other condition of entry to an enclosed area shall not prevent its constituting a public place, provided that admission is granted on a uniform

basis to persons who meet the established criteria for use or admission, and further provided that no private club or membership organization that receives no public funds shall be considered a public place for purposes of this article.

In addition to the enclosed area described above, the term public place shall include any associated exterior area, whether enclosed or not, that is within 25 feet of any entrance or exit door or wheelchair ramp serving the door, if any, that provides public ingress or egress to the public place, to the extent that the area is within the control of the person who controls the public place and is not being used as a restaurant outdoor seating area.

*Restaurant.* Any coffee shop, cafeteria, luncheonette, sandwich stand, soda fountain, private and public school cafeteria or eating establishment, and any other eating establishment, organization, club, including veterans' club, boardinghouse, or guesthouse, that gives or offers for sale food to the general public or employees, including kitchens in which food is prepared on the premises for serving elsewhere, such as catering facilities, except that the term *restaurant* shall not be construed to include any portion of the establishment that constitutes a *restaurant bar*. A lounge bar shall not constitute a restaurant for any purpose.

*Restaurant bar.* One contiguous area of a restaurant that is primarily devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which food service, if any, is only incidental to the consumption of such beverages.

*Restaurant outdoor seating area.* Any patio, sidewalk cafe, or similar unenclosed area in which a contiguously situated restaurant provides outdoor food service to its patrons.

*Retail establishment.* Any enclosed area in any portion of which goods or services of any nature are sold or offered for sale directly to consumers including, but not limited to grocery

stores, convenience stores, dry goods stores, banks, department stores and specialty shops.

*Retail establishment mall.* An enclosed area that connects customer entrances to two or more retail establishments and is used for customer pedestrian traffic, regardless of whether the area is also used for other purposes. The term *retail establishment mall* does not include separate enclosed areas that may be appended thereto. Separate enclosed areas that are appended to a retail establishment mall shall be subject to separate regulation hereunder, as applicable.

*Sporting event.* An event wherein an individual or team of individuals participates in an athletic endeavor that requires physical exertion, including but not limited to the following activities: baseball, football, basketball, hockey, soccer, tennis, wrestling, boxing, swimming or other water sports, volleyball, gymnastics, handball, skating (ice and roller), weightlifting, fencing, martial arts related sports, table tennis, rodeo or track and field games.

*Tobacco specialty retail shop.* An enclosed area utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

(Ord. No. 02-800, § 1, 8-28-02; Ord. No. 05-245, § 1, 3-9-05)

**Sec. 21-237. Smoking in public places and large multi-tenant buildings generally prohibited.**

(a) A person commits an offense if he is knowingly or intentionally in possession of a burning tobacco product or smokes tobacco in any public place or in any large multi-tenant building.

(b) In conformity with this article, a person having ownership, possession or control of a public place or large multi-tenant building may, but is not required to, designate exception areas in which smoking is permitted.

(c) Except as otherwise prohibited by this article, one or more exception areas may be created within a public place or large multi-tenant building; provided, however that:

- (1) The following areas may be designated as exception areas in their entirety only:
  - a. An enclosed bed space area of a hospital or nursing home used for two or more patients;
  - b. A hotel or motel sleeping room rented to guests; and
  - c. A taxicab.
- (2) Further, the following areas, or portions thereof, may be designated as exception areas:
  - a. A restaurant bar;
  - b. A lounge bar;
  - c. A tobacco specialty retail shop;
  - d. A convention center exhibition area;
  - e. A lobby, mall (other than a retail establishment mall), reception area or waiting room;
  - f. A room or hall being used for private functions;
  - g. A room or area that is being used as hospitality suite at a stadium; and
  - h. A separately enclosed private individual office or work area or occupancy within a large multi-tenant building;

provided that the uses listed above may not be designated if they are situated within and do not constitute a separate enclosed area from a retail establishment mall.

- (3) If the exception area does not constitute the entirety of an enclosed area, it shall be located immediately adjacent to the exhaust system of the enclosed area, if any, or otherwise located and ventilated so that smoke is not drawn into or across any area where smoking is prohibited.

- (4) The exception area shall be designated in conformity with the requirements of subsection (f) of this section.
- (5) The exception area shall not include the following areas: elevators; restaurants (other than restaurant bars, or rooms or halls used for private functions); restrooms (unless separate facilities are provided for smokers and nonsmokers); retail establishments (other than bars and tobacco specialty shops that are not situated in retail establishment malls); retail establishment malls; spectator seating areas and concourse areas of theaters, arenas, stadia, concert halls and enclosed facilities (other than bars) being used for public performances or for sporting events other than in enclosed stadia having a seating capacity of 30,000 or more persons; public meeting rooms (unless being utilized for a private function); registration desks; copy rooms; or areas where possession of a burning tobacco product or smoking tobacco is prohibited by the Fire Code. In a multilevel enclosed stadium having a seating capacity of 30,000 or more persons, exception areas may be created in hospitality suites and an exception area may be created on the concourse area of only one level, provided that a concourse exception area may only be created if there are one or more bars selling mixed drink alcoholic beverages in the concourse on that level and further provided that a concourse exception area may not extend to within two feet of any spectator seat; except in hospitality suites, no spectator seating may be included in any exception area.
- (6) Any area that is designated as an exception area within a large multi-tenant building must be equipped with a ventilation system that provides an air exchange at least once every 15 minutes and exhausts all of the exchanged air through ductwork to the exterior of the building so that it is not drawn into any nonsmoking area of the building. The system shall be designed so that the exception area is at

neutral air pressure to any adjacent and occupied nonsmoking area. The air exchange system shall, to the extent required by state law, the Construction Code, and the Fire Code, be designed by a Texas licensed professional engineer. This requirement shall not be construed to preclude air exchange between smoking and non smoking areas through use of automated dampers or similar devices during a life safety emergency situation, where required to conform to emergency pressurization provisions of the Construction Code and the Fire Code.

(d) It is an affirmative defense to the application of the offense stated in subsection (a) above, if the person is in possession of the burning tobacco product or smokes tobacco:

- (1) Exclusively within an exception area designated for smoking tobacco; or
- (2) As a participant in an authorized theatrical performance.

(e) It shall be the duty of every person having ownership, possession or control of any public place or large multi-tenant building to cause extinguishment facilities to be provided and maintained as required in this subsection, and any knowing or intentional failure to maintain compliance with such duty shall constitute an offense. An extinguishment facility shall be provided:

- (1) At each exterior entrance to the public place; and
- (2) In each exception area, if any, provided that an extinguishment facility need be provided only at the entrance to any enclosed area containing more than one exception area, and further provided that extinguishment facilities for elevators shall be placed at each landing and may not be situated within any elevator car.

(f) It shall be the duty of every person having ownership, possession or control of any public place or large multi-tenant building to cause any exception areas and the boundaries thereof to be clearly disclosed to persons within the public place or large multi-tenant building and any knowing or intentional failure to maintain com-

pliance with such duty shall constitute an offense. The information that is required to be provided under this subsection may be furnished in any one or more of the following manners as applicable:

- (1) By conspicuously posting signs in the exception area which clearly delineate the bounds of the exception area and state that smoking is permitted therein.
- (2) If the entirety of the enclosed area has been designated as an exception area, by posting a sign at each entrance thereto, which sign must clearly indicate the bounds of the exception area and state that smoking is permitted therein.
- (3) In a public place that has controlled seating whereby an employee directs patrons to seating or waiting areas, by asking each patron whether he prefers a smoking-permitted or a non-smoking area before directing that patron to a seat in the appropriate area. If the establishment takes advance reservations, the person taking the reservations shall ask whether the patron prefers a smoking-permitted or no-smoking area at the time the reservation is made.

In a public place that is utilizing this method, a sign must be conspicuously posted at each entrance stating "Smoking-Permitted and No-Smoking Areas Available" and a wall chart must be conspicuously posted and available for review near the main entrance clearly designating the smoking-permitted and no-smoking areas.

Any sign that is required to be posted pursuant to this subsection shall be printed in proportional and proportionally spaced letters of a color clearly contrasting with the background upon which they are printed, which letters shall have a height of not less than one inch.

(g) It shall be the duty of every person in control of a public place or large multi-tenant building in which the possession of a burning tobacco product or smoking tobacco is declared an offense by subsection (a) above to request any

person known to be in possession of a burning tobacco product or smoking tobacco and who is known not to be in an exception area to extinguish the burning tobacco product. Any knowing or intentional failure to maintain compliance with such duty shall constitute an offense.

(h) In addition to all requirements of article II of chapter 20 of this Code, the health officer shall, in conjunction with the inspection of each proposed establishment as is required to be conducted prior to the issuance of a food dealer's permit pursuant to section 20-36 of this Code, inspect such proposed establishment for compliance with subsection (f) above, if applicable to such proposed establishment or any portion thereof. No food dealer's permit shall be issued therefor unless the establishment is in compliance with subsection (f) above, if said subsection is applicable to such proposed establishment or any portion thereof.

(Ord. No. 02-800, § 1, 8-28-02; Ord. No. 05-245, § 1, 3-9-05)

#### **Sec. 21-238. Smoking in patients' rooms.**

(a) It shall be unlawful for the person in charge of any hospital or nursing home knowingly or intentionally to permit any patient to be assigned to an enclosed bed space area that has been designated as an exception area if the patient has requested assignment to a nonsmoking area during the course of his admission to the hospital or nursing home.

(b) It shall be unlawful for any person who is not a patient assigned to such enclosed bed space area to be in possession of a burning tobacco product or to smoke tobacco within an enclosed bed space area that has been designated as an exception area.

(Ord. No. 02-800, § 1, 8-28-02)

#### **Sec. 21-239. Employers' policies.**

Each employer shall adopt, implement and maintain a written employee smoking policy for application in places other than public areas. The policy shall accommodate the preference of any nonsmokers to work in a smoke-free area. The provisions of this section shall not be construed to require any employer to allow smoking on any



premises. A copy of the policy shall be provided to all current employees within three weeks of the date of the adoption of such policy, and to all future employees at the time of their entry into employment.

(Ord. No. 02-800, § 1, 8-28-02)

#### **Sec. 21-240. Exception areas not required.**

Nothing in this article shall be construed to require any person to establish an exception area in order to accommodate the preference of smokers. Any exception area that is designated must be created and maintained in strict compliance with this article.

(Ord. No. 02-800, § 1, 8-28-02)

#### **Sec. 21-241. Inspections; reports.**

(a) The health officer, upon written complaint, shall inspect exception areas in public places and large multi-tenant buildings within the city to determine whether the exception areas have been designated in conformity with this article.

(b) The health officer, after proper identification, shall be permitted to enter any public place or large multi-tenant building at any reasonable time, for the purpose of making inspections of exception areas to determine compliance with this article. The health officer shall be permitted to examine the applicable records of the establishment to obtain information pertaining to the designation of the exception area. Records required to be maintained for inspection relating to each exception area in a large multi-tenant building shall include a computation of the volume of the exception area and verification by a licensed professional engineer that the system meets the requirements set forth in this article.

(c) Whenever an inspection is made of a public place or large multi-tenant building, the findings shall be recorded on an inspection report form, and the original of each inspection report shall be provided to the person in charge of the establishment. Another copy of the inspection report shall be filed with the records of the department. An additional copy shall be mailed to the person who filed the complaint at the address specified on the complaint form.

(d) The inspection report form shall set forth the following:

- (1) The specific conditions in the exception area, if any, that are in violation of this article;
- (2) That a hearing will be held before the health officer if written notice of appeal is filed in the office of the director within ten days after the date of the inspection;
- (3) That the appeal may be filed by the person in possession or control of the public place or large multi-tenant building;
- (4) That the appeal must be filed on a form prescribed for that purpose by the director; and
- (5) That the person in possession or control may appear in person and/or be represented by counsel and may present testimony and may cross-examine all witnesses.

If exception areas are found to be in violation within two or more enclosed areas, then a separate inspection report shall be issued for each enclosed area.

(e) The inspection report shall also specify a date certain, not less than ten nor more than 30 days following the date of the inspection by which the exception area must be removed or the conditions of violation specified must be corrected. In establishing the date, the health officer shall take into consideration the nature and extent of the work required, if any, to correct the deficiencies noted. Failure to remove the exception area or to correct the conditions of violations noted by the date specified in the inspection report shall constitute an offense.

(f) Whenever an exception area is removed in order to comply with an inspection report issued under the provisions of this section, it shall not be redesignated until such time as a reinspection determines that conditions responsible for the requirement to remove the exception area no longer exist. The health officer shall make a reinspection within ten days after receipt of a written request therefor.

(g) Any complainant who believes that the inspection report resulting from his complaint is materially incorrect may file a written statement with the director stating the respects in which the report is believed to be incorrect. The director shall review such complaint and inspection report, and if he determines that there is a probability that the inspection report is in error, he shall cause the enclosed area to be reinspected. (Ord. No. 02-800, § 1, 8-28-02)

#### **Sec. 21-242. Appeals to hearing officer; decisions.**

(a) If an appeal is timely filed pursuant to section 21-241, a hearing shall be held.

(b) All hearings shall be held by the health officer who shall be referred to as the hearing officer; however, the director shall not designate any person to perform the duties of hearing officer under this section who has participated in the inspection of such exception area, or has prior knowledge of the allegations or circumstances discovered in such inspection or inspections except that the person designated as hearing officer may, prior to the hearing, receive a copy of the notice given to the person in charge.

(c) All hearings shall be conducted under rules consistent with the nature of the proceedings; provided, however, that the following rules shall apply to such hearings:

- (1) The person who filed the appeal (the appellant) and the person or persons who filed the complaint (the complainant(s)) shall each be given written notice of the date, time and place of the hearing. Such notices shall be deposited in the United States mail at least ten days prior to the hearing. The notice shall be mailed to the address specified for notice on the appeal form or complaint form as applicable.
- (2) The city and the appellant shall have the right to representation by a licensed attorney though an attorney is not required.
- (3) The city and the appellant may present witnesses in their own behalf.

(4) The city and the appellant shall each have the right to cross-examine all witnesses.

(5) Only evidence presented before the hearing officer at such hearing may be considered in rendering the order.

(d) If the appellant fails to appear at the hearing at the time, place and date specified, the city shall present sufficient evidence to establish a prima facie case showing violation of this article which formed the basis of the removal of the exception area.

(e) The hearing officer shall make written findings of fact. If the hearing officer finds that the exception area is, in fact, in violation of this article, he shall order the removal of the exception area. The exception area may not be redesignated until it is found to be in compliance after reinspection under section 21-241(f). A copy of the findings and order of the hearing officer shall be sent by certified mail, return receipt requested, to the person filing the appeal at the address specified for notice in the appeal and filed in the office of the director. If the complainant appeared at the hearing, he shall also be furnished a copy of the order.

(f) The timely filing of an appeal shall stay the operation of the inspection report. It shall be unlawful for any appellant to fail to remove an exception area pursuant to an order of the hearing officer issued under subsection (e), above, by the 14th day following the deposit of the order in the United States mail in the manner provided herein.

(Ord. No. 02-800, § 1, 8-28-02)

#### **Sec. 21-243. Appeal to city council.**

(a) Any person aggrieved by a decision of the hearing officer pursuant to section 21-242 may make a written appeal to the city council by filing such appeal in the office of the city secretary within ten days after receipt of written notice containing the findings and order of the hearing officer and the timely filing of the appeal shall serve to stay the operation of such order. The city secretary shall forward the written appeal, together with the complaint form, inspection report, findings, order and other documents or evidence

received by the hearing officer, to the city council. Upon receipt thereof, the city council shall set a time and place for hearing such appeal and cause the city secretary to give notice thereof to all parties. Such notices shall be deposited in the United States mail at least ten days prior to the hearing.

(b) A decision of the city council shall be effective as of the date it is issued. Every decision of the city council shall be final. The city secretary shall send written notice of the city council's decision to all parties.

(c) It shall be unlawful for any appellant to fail to remove an exception area pursuant to a decision of the city council by the fourteenth day following the deposit of notice of said decision in the United States mail by the city secretary.  
(Ord. No. 02-800, § 1, 8-28-02)

#### **Sec. 21-244. Rules and regulations.**

The director may promulgate rules and regulations consistent with this article with respect to inspection, hearing and appeal procedures. The director may also promulgate forms that must be utilized for the purpose of filing complaints and appeals hereunder.  
(Ord. No. 02-800, § 1, 8-28-02)

#### **Sec. 21-245. Public education.**

The health officer shall engage in a program to explain and clarify the purposes of this article to citizens affected by it, and to guide owners, operators and managers in their compliance with it.  
(Ord. No. 02-800, § 1, 8-28-02)

#### **Sec. 21-246. Other smoking prohibitions not affected.**

Nothing in this article shall be construed to repeal or excuse compliance with smoking prohibitions imposed by the fire code. The extent that any offense specified in this article also constitutes an offense under the fire code, then the offense shall be punishable pursuant to the fire code.  
(Ord. No. 02-800, § 1, 8-28-02)

#### **Sec. 21-247. Violations; penalty.**

Whenever in this article an act is prohibited or is made or declared to be unlawful or an offense or misdemeanor, or whenever in this article the doing of any thing or act is required or the failure to do any thing or act is prohibited, the violation of the provision shall be and constitute a misdemeanor punishable, upon conviction, by a fine not to exceed \$2,000.00. Each violation shall constitute and be punishable as a separate offense. Prosecution or conviction under this provision is cumulative of and shall never be a bar to any other civil or administrative remedy provided or allowed in this article or by law.  
(Ord. No. 05-245, § 3, 3-9-05)